A Bill to Make America A Nation of Informers, See Page 2

I. F. Stone's Weekly

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Van Fleet's Pipe-Dream in *Life*

In *Life* last week General James A. Van Fleet told a dramatic story. In April, 1951, he was ordered to take over command of the Eighth Army in Korea. He arrived on April 14. "The atmosphere at Taegu was tense. The Eighth Army had taken some bad beatings. We had managed to fight back, but now it appeared that the enemy was about to attack with tremendous forces and try to drive us into the sea."

"And then," Van Fleet went on, "came the sudden and dramatic shift in the tides of war that every American must surely remember from the spring of 1951. The next six weeks were among the greatest in the history of the U. S. Army. We met the attack and routed the enemy. We had him beaten and could have destroyed his armies . . . Then our government's high policy intervened, and we were ordered not to advance any farther. The stalemate began, and then the long and futile armistice talks . . ."

The implication of the *Life* article is that the truce talks saved the enemy from defeat, that the stalemate was the result rather than the cause of a decision to negotiate, and that a decisive victory can be won in Korea if only we stop talking and get down to "business." Van Fleet told much the same story to the Senate Armed Services Committee in March. But when Van Fleet's superior, U.S. Army Chief of Staff, J. Lawton Collins, appeared before the committee, he cut the ground from under this dramatic story. "When the negotiations began," General Collins said in answer to a question by Senator Case, "there was no fighting of any consequence by either side . . ."

When Senator Byrd asked General Collins, "Didn't General Van Fleet have an offensive in June, 1951?", Collins could recall no major military operation at the time. "Well, if it was," Collins told Senator Byrd, "it was a local offensive, if I recall rightly." Van Fleet was present. Collins turned to him and said, "Maybe General Van Fleet can answer that directly." The colloquy which followed deflated Van Fleet's story of a great offensive tragically shut off at the moment of victory:

> General VAN FLEET. The operations going on in the early part of 1951 were limited offensives.
>
> Senator BYRD. What was the date, General, that you told the committee that you thought you could have gotten a very great victory had you been permitted to go ahead? Wasn't that June 1951?
>
> General VAN FLEET. Early June of 1951.
>
> Senator BYRD. That is the offensive I was talking about was the one in June 1951.
>
> General VAN FLEET. That was the counter-offensive, limited in nature.

The proof that Van Fleet's story in *Life* is a pipe-dream may be found on pages 108 and 132 of the hearings on "Ammunition Supplies in the Far East" as published by the Senate Committee on Armed Services. The testimony debunks Van Fleet's glamorous account of the greatest six weeks "in the history of the U. S. Army" in which we had the enemy beaten "and could have destroyed his armies." The Army's Chief of Staff never heard of those greatest six weeks in the history of the U. S. Army and Van Fleet had to knock down his own story when asked about it by Senator Byrd the day Collins was present.

But for every reader reached by this Weekly with the truth about Van Fleet's story, a half million or more will swallow unawares the pernicious poppycock dished out by the series in *Life*. The important point is not that Van Fleet is a romantic liar. The important point is that at the moment when the Chinese have made dramatic new concessions in the peace talks, vast engines of propaganda are set in motion to poison the American mind against peace. *Life* took full pages in newspapers all over the country to advertise the Van Fleet series in advance, "The Truth About Korea: From a Man Now Free to Speak" in which "Our Combat General . . . Warns Us Not to Overestimate Our Enemy in The Future."

Van Fleet picks up where MacArthur left off in the battle of the fire-eaters against the more sober American military. Van Fleet aims directly at the Chairman of the Joint Chiefs of Staff, Omar Bradley, when he promises in his next installment to prove that "Korea is for us the right war in the right place at the right time and . . . with the right allies", by which Van Fleet means principally Syngman Rhee's South Koreans. Van Fleet does not explain in *Life* why he told a visiting Filipino delegation two winters ago that Korea was "a blessing" but he speaks for powerful forces in the American military bureaucracy who want the "blessing" to continue. The ultimate aim was indicated in a remark Van Fleet made to the committee but was too circumspect to repeat in *Life*. "You will never get a political solution," Van Fleet said of the Korean situation, "there will always be an Iron Curtain until you have it out with Russia."

This is the language of those who think a new world war inevitable and desirable, who see the Korean conflict as a useful means of maintaining tension and the pace of mobilization. While the peace movement in this country has been silenced by intimidation, the voice of the warmongers is amplified. A deaf ear is turned to India's new warning that the Chinese may compromise no further. A cold shoulder greets Churchill's call—and the Pope's—for top level talks. As we go to press Premier Chou En-lai protests that U. S. planes killed or wounded more than 250 Chinese last Sunday and Monday in raids on two Manchurian cities. Van Fleet's pipe-dream is part of a larger pattern.

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An Editor Who Informs On His Own Staff

In the Inquisition, the victim was required to confess, to abjure heresy, to denounce others and to refrain from any criticism of the Holy Office. The transcript of the Wechsler hearings before the McCarthy committee shows that the editor of the New York Post met all but one of the medieval standards. He confessed his youthful errors. He submitted proofs of orthodoxy. He "named names". He failed on only one count to qualify for reconciliation. He had criticized the Inquisitors—the FBI, the House Un-American Activities Committee and, of course, McCarthy.

Lea's monumental history of the Inquisition in Spain, which begins to read more and more like a contemporary document, tells us that "criticism" of the Inquisition "was held to be impeding its action and was a crime subject to condign punishment." The logic was twofold. Criticism, even when justified, was wrong because it brought scandal on an institution doing a sacred task: "I don't like McCarthy either, but this is a job that had to be done." Then, also, to attack those rooting out heresy was to cast suspicion on the fervency of one's own opposition to heretics.

The Madness in His Method

Once the Inquisition is accepted, it is futile to protest that its victims should be chosen and broiled more carefully. This is the vice in *Time's* alarm last week over "McCarthy's methods: he seemed even less interested in systematically investigating subversives on U. S. newspapers than in carrying on a personal vendetta against a persistent critic." There is—to reverse the chestnut—a madness behind McCarthy's methods. One cannot acquiesce in the madness and effectively fight the methods it produces.

To talk as if Congress has a right or duty "systematically", as *Time* says, to ferret out "subversives" on U. S. newspapers is to accept the premises of McCarthyism and undercut any successful fight against it. If we are to replace free discussion with a system of debate limited and policed against the "subversive", we must expect the wielders of such power to abuse it and we must expect the orbit of suspicion to widen to the point of paranoia—real or simulated—in Wechsler's case.

Heresy to Doubt The Devil

The weakness evident in those few publications supporting Wechsler springs from this unwillingness to combat the notions from which McCarthyism springs and to counter them with the courageous risk-taking affirmations of a free society. For if Communists are such cunning devils—to doubt the consummate cunning of Satan was a particularly insidious form of heresy—then is it not possible that Wechsler as a promising young Communist was ordered many years ago in Moscow to pretend anti-Communism in order all the more effectively as McCarthy said "to attack and destroy any man who tries to hurt and dig out the specific traitors who are hurting our country?"

To develop an atmosphere in which such hobgobblin fantasies are eagerly believed by a substantial portion of the population is a necessary preliminary to the establishment of Fascism. And there is reason to believe that McCarthy consciously and skillfully is working toward just that goal. It is easy to see what he has gained and it is difficult to see what he can lose in the battle as waged by Wechsler. For the fight as waged by Wechsler concedes that McCarthy has a right to subject newspapermen to ideological interrogation, that they have a duty to testify and that they must not falter even when asked to act as informers.

An editor who will inform on his own staff members "to keep the record straight" is an editor who has allowed himself to be degraded. To break the intellectuals morally is part of the strategy of the witch hunt. The exaction of the informer's role helps to spread panic and distrust; this is as important a function as learning who else may be dragged into the pillory.

Edgerton's Barsky Dissent

It is only by denying the right of Congress to investigate political opinions that the basic freedoms may be preserved. The lines of effective and principled battle were laid down by U. S. Circuit Judge Edgerton in his great dissenting opinion (167 F 2nd 254) in the Barsky case, an opinion which will some day be regarded as we today regard the similar dissents in a similar period by Holmes and Brandeis.

"The investigation," Judge Edgerton said of the House Un-American Activities Committee "restricts the freedom of speech by uncovering and stigmatizing expressions of unpopular views. The Committee gives wide publicity to its proceedings. This exposes the men and women whose views are advertised to risks of insult, ostracism and lasting loss of employment . . . The effect is not limited to the people whom the Committee stigmatizes or calls before it, but extends to others who hold similar views and to still others who might be disposed to adopt them . . . People have grown wary of expressing any unorthodox opinions . . . it affects in one degree or another all but the very courageous, the very orthodox and the very secure . . . What Congress may not restrain, Congress may not restrain by exposure and obloquy."

Must All Americans Become Informers?

The question of the proper attitude toward Congressional Inquisition is made urgent by the prospect that before this issue is in the mails the Senate will have passed the McCarran bill to destroy the protection afforded by the self-incrimination provisions of the Fifth Amendment.

A similar bill was introduced by the Nevadan last year and the year before but failed to come up for a vote. This year the bill, S-16, was reported by the Senate Judiciary Committee without hearings and would have passed on the consent calendar Wednesday of last week but for the objections of Senator Taft.

The original McCarran bill would have compelled a witness to testify if a majority of the investigating committee voted to give the witness immunity. This was amended last year on motion of Senator Ferguson, R., of Michigan to provide for a two-thirds vote, including at least one member of the minority party. This is the form of the present bill.

Only The Fifth

The only ground on which the Supreme Court has so far upheld the right of a witness to refuse an answer is that provision of the Fifth Amendment which says no man shall be compelled to be a witness against himself. Theoretically the provision can only be invoked if the answer might provide some link in a chain which would justly or unjustly incriminate the witness.

But in practice the provision can and has been used for other and broader purposes. The rule laid down by Chief Justice Marshall in Aaron Burr's trial for treason makes the witness the sole judge of whether the testimony might be incriminating and says that if the witness so declares under oath "the court can demand no other testimony of the fact."

Safeguard Against Frame-Up

As a result the provision has been invoked by non-Communist liberals or Leftists fearful of being framed for perjury by some professional informer if they denied Communist membership or connections. It has also been invoked to avoid being forced into informing on others. Once a man testifies as to his own politics he may not, on pain of contempt, refuse to answer questions about others.

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A New Era Opens In The Witch Hunt

The Fifth Amendment has also been the sole refuge from the arbitrary procedures of Congressional committees and the one way to avoid political interrogation on principle without risking jail for contempt.

The Pilgrims Understood

Of all the provisions in our Constitution, none other—except that which forbids an establishment of religion—would have had more meaning for the Pilgrim Fathers than this. Their flight to Holland and later the New World was bound up with struggle against similar Inquisition whose most potent weapon was to put religious dissenters under oath and force them to testify against themselves, their families and their friends. Elizabeth's Court of High Commission and its older lay twin, the Court of Star Chamber, both used compulsory testimony to enforce doctrinal conformity.

The firm establishment of the privilege against compulsory testimony goes back to the case of John Lilburne, a contentious character who lived to become known as "Freeborn John". He was arrested in 1637 on his return to England from the freer atmosphere of Holland and accused of having printed certain heretical and seditious books for distribution in England. Lilburne was then a youth of 20. When brought before the Court of Star Chamber, he refused to take the oath and asserted that no one had a right to compel him to incriminate himself and his friends. He was publicly whipped, pilloried and imprisoned. In 1641 the revolutionary Long Parliament set him free and abolished the courts of High Commission and Star Chamber. One of the successful demands of Cromwell's New Army was that no man be required to testify against himself.

A Spurious Immunity

This is the ancient privilege which may soon be overturned by the McCarran bill. On its face, as required by the Constitution, it offers immunity from prosecution in return for the loss of the privilege. But this immunity, which may prove a Godsend for gangsters, is spurious when applied to political cases.

Federal law cannot grant immunity from prosecution under State legislation against sedition and "criminal anarchy". Dragnet conspiracy prosecutions are being utilized under the Smith Alien and Sedition Act, and it is doubtful that there can be complete immunity against them. Witnesses are still liable to prosecution for perjury and contempt; the former exposes them to the danger of frame-up by political informers, the latter hangs over their heads if they refuse to betray their friends. The immunity is conferred only as to such portion of the testimony on which the Fifth Amendment privilege has been invoked.

Pitfalls of Conspiracy

As I explained in an article for the *Daily Compass* two years ago when this legislation first came up, "A man might testify to activities which he considered innocent and then wake up to find that these activities have been spun by the government into some weird fabric of 'conspiracy' . . . If he invokes his privilege before telling of things he considers innocent, he may be accused of abusing the privilege. If he fails to invoke his privilege, he may one day find the testimony used against him."

The McCarran bill is calculated and intended to turn the American people into a race of stoolpigeons. As in the days of the Spanish Inquisition, people will be required to trample on all considerations of kinship and honor to inform. In those days men could not trust their wives or children, and none knew whether those they sought to shield might not already have betrayed them. Yet there seems to be no opposition of principle to this revolutionary measure.

Kefauver's Only Objection

The only minority view which emerged from the Senate Judiciary Committee was Senator Kefauver's and his objection was a limited one. He thought "the dangers of interfering with necessary Federal law prosecution and innocently granting immunity to dangerous and heinous criminals is too great under this bill." He cited the Rosenberg case and said that David Greenglass, had he been summoned as a witness before a Congressional committee, might have won immunity from prosecution by testifying. He wanted the bill amended to require the Attorney General and the FBI to be informed in advance by any committee considering a grant of immunity to compel testimony.

It is a bad sign that the *Washington Post* on the eve of the vote declared, "We think the general principle behind this measure is sound" but urged that grant of immunity be more carefully safeguarded. From the standpoint of real crime enforcement, such general immunity statutes open the way to grave abuses. These arise naturally from the dangerous fallacy that Congressional committees may act as roving public grand juries. From the standpoint of political persecution, the effects are appalling.

Since the intention is to punish by exposure and blacklist for political affiliations past or present, the "immunity" means little. The purpose is to widen and intensify terror-by-investigation. Should the bill become law, we will enter a new stage in the American Inquisition.

Only by invoking the First Amendment and risking imprisonment for contempt will it then be possible to evade the role of informer.

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• *Editor and Publisher*, I. F. STONE

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"The Truman Era" Published

"The Truman Era", a collection of my best pieces from 1945 to 1952, has just been published and will probably meet the same boycott from reviewers as my "Hidden History of the Korean War." Advance response, however, indicates that this new book like its predecessor will have a substantial sale at home and abroad. I am proud of "The Truman Era" and believe you will like it. The book sums up my political philosophy and preserves the best of my newspaper work in more permanent form. I believe it will some day have an honored place in the annals of American journalism. The book can be ordered from the Weekly at the bookstore price, $3, and there are still some copies of "The Hidden History" available at $5. Much that is now happening at Panmunjom becomes clearer in the light of that book.

—I. F. Stone

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JENNINGS PERRY'S PAGE

Courts Must Say What Congress Can't Give Away

Before we go on, I would like to contribute one citizen's earnest mite to the commendation the American people owe Wayne Morse, Paul Douglas, John Sparkman, Estes Kefauver, Clinton Anderson and the 30 other senators who tried to hold the door against the tidelands oil bill. Unfortunately the horse was stolen last Nov. 4, when everyone was looking the other way. What might happen to a fabulous national treasure offshore, under water and out of sight, seemed inconsequential beside Candidate Eisenhower's undertaking, as it was hopefully received, to go to Korea personally and get the war over with. The issue is not yet well understood, and then was seen dimly. Had it been clear in the view of all, however, it hardly would have had decisive weight with even one American voter who believed the election of the General would do most for the chances of peace.

This does not mean that the nation by elective choice has given or signified its willingness to give the submerged riches to the coastal states. Nor has it been established by passage of the bill that Congress, or any representative body, has the right to make such a gift.

What has been established, by the Supreme Court's 1947 ruling, is that the lands in question are the property of the United States, of all of the people thereof. From this ruling it now is contended, even by "leading" legal minds among the opponents of the give-away bill, that the legislation passing title to the states, though profligate and probably unpopular, is competent, that precisely because the federal right is paramount the act of Congress disposing of the property is valid and conclusive. The contention itself is plausible of course only to the extent that it is taken for granted that the affairs of the nation, in all things, are at the mercy of its governmental creature.

There still is room to swing a healthy doubt that Congress has full authority as a real estate agent for the public domain, that it can sell, bargain, devise or give away to individual states of the Union, or to any foreign state, the most valuable tracts of the commonwealth. Already on the initiative of West Virginia the tidelands case is pointed again towards the courts and it is not unlikely that other states, troubled for the equity of their citizens in the natural resources of the country's territorial possessions, will join in the proceedings.

We may confidently expect many pithy questions of congressional authority in the premises to be raised, many possible parallels to be probed. For it is unreasonable to suppose that the people as a whole are so indifferent to their interests that they will permit to pass unchallenged a precedent by which, another time, a headstrong Congress could justify "giving back" all that remains in the nation's sole name of the Louisiana Purchase—the Mississippi river—to Louisiana, or ceding the Gadsden Purchase to Mexico, or (for an extreme example) selling Alaska back to the expansive state within whose historical boundaries Alaska—indisputably—once lay.

These absurd suppositions will have to be exercised, I think, not only to set off the absurdity of the tidelands deal but to locate, by adjudication, the limits restraining even Congress in the alienation of parcels and tracts of the national holdings. There must be such limits. There always will be ready "takers" for any part of the land by which the United States allows its patrimony to be diminished. This time it was the great oil statesmen of Texas, California and Louisiana who slipped up on our blind side during an election, planting an "issue" (while our chief concern was claimed by a distant battlefield) that would enable them to demand of a new and unwary administration the transfer of the oil-rich sea-bottom from federal ownership to more amenable jurisdictions. Tomorrow, we may be beset by similar machinations looking to congressional cession of other public properties loaded with natural prizes whose existence is yet unsuspected.

Sen. Morse and his fellow conservationists have done us this service, for which we ought additionally to esteem them, that their deliberately prolonged debate has alerted us to a nicer regard for the commonwealth and the need of a sharper watch upon what appear to be side issues in presidential campaigns.

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